

1 VIESTE, LLC, ET AL.,

2 No. C-09-04024 JSW (DMR)

3 Plaintiffs,

4 v.
5 **ORDER GRANTING PLAINTIFFS'**
6 **ADMINISTRATIVE MOTION FOR**
7 **RELIEF FROM EXPERT DISCLOSURE**
8 **AND DISCOVERY DEADLINES**

9 HILL REDWOOD DEVELOPMENT, ET AL.,

10 Defendants.

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15 On May 27, 2011, Plaintiffs filed a motion for administrative relief pursuant to Civil Local
16 Rule 7-11. Plaintiffs' motion seeks permission for late disclosure of an expert report on alter ego
17 issues; Defendants filed a response. *See* Docket Nos. 329-332. The matter is deemed submitted for
18 immediate determination without hearing. Civil L.R. 7-11(c).19 The deadline for disclosing experts was February 22, 2011, followed by a March 22, 2011
20 cut-off for completion of expert discovery. Docket No. 129. Plaintiffs did not disclose Dr. Nisha
21 Mody's expert report on alter ego issues until May 6, 2011. Plaintiffs argue that late disclosure is
22 justified by Defendants' actions in withholding pertinent discovery until March and April 2011,
23 providing incorrect and misleading discovery responses, instructing deponents not to answer
24 questions relating to alter ego issues, and engaging in other discovery abuses. Plaintiffs contend that
25 these discovery failures resulted in Plaintiffs' inability to engage an expert on this subject until after
26 the disclosure deadline, and that Dr. Mody's opinions were provided to Defendants without undue
27 delay and more than ninety days before trial.

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1 Defendants argue that Plaintiffs pursued alter ego issues since at least June 2010, but did not
2 raise the prospect of disclosing an expert on the topic, did not seek relief from the February 22, 2011
3 expert disclosure deadline, and should not be excused from their obligation to meet that deadline.
4 Defendants contend that Plaintiffs timely identified Dr. Mody as a damages expert, but failed to put
5 Defendants on notice that Dr. Mody would also offer opinions on alter ego liability. Finally,
6 Defendants argue that expert opinion on the subject of alter ego is improper under Federal Rule of
7 Evidence 702.

8 As to the question of the timing of Dr. Mody's May 6, 2011 report, there is ample good
9 cause supporting Plaintiffs' delay. Defendants have been sanctioned on three separate occasions for
10 discovery abuses in this case. *See* Docket Nos. 192, 315, and 334. Among other things, this Court
11 noted that Defendants repeatedly violated court-ordered deadlines to produce discovery which
12 impeded Plaintiffs' ability to conduct alter ego discovery, to engage in expert discovery, and to
13 prepare for summary judgment and trial. Docket No. 334.

14 Defendants argue, however, that Plaintiffs should at least have raised the prospect of an alter
15 ego expert. Plaintiffs could have given timely notice of their intent to name an alter ego expert, and
16 then sought additional time to identify the expert and produce a written report. Under other
17 circumstances, Defendants' point would be well-taken. Defendants correctly note that the disclosure
18 rules exist at least in part to avoid opportunities for a party to "sandbag" the opposition. However,
19 in the context of this case, Plaintiffs should be given the benefit of the doubt. Plaintiffs have not
20 tried to hide the ball. Defendants concede that Plaintiffs have vigorously pursued the alter ego
21 doctrine for the better part of a year. Plaintiffs' failure to leave a timely place holder for an alter ego
22 expert is a predictable consequence of Defendants' significant documented discovery abuses.

23 In granting administrative relief from the expert disclosure deadline, this Court expressly
24 does not rule on the merits of whether the expert report should be excluded under Federal Rule of
25 Evidence 702, or any other basis. Such issues are more appropriately determined by the trial judge
26 in this matter.

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1 Plaintiffs' motion for administrative relief is GRANTED. Plaintiffs shall tender Dr. Mody
2 for deposition regarding expert opinions on the subject of alter ego at a mutually agreeable place and
3 time.

4 Dated: June 3, 2011

